

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-003-09-1-5-01231-16
45-003-11-1-5-01140-16
45-004-13-1-5-01160-16
45-004-13-1-5-01170-16¹
45-004-15-1-5-01826-16

Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-05-33-253-002.000-004
Assessment Years: 2009, 2011, 2013, 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2009, 2011, 2013 and 2015 assessments of his property located at 8925-29 Juniper Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determinations valuing the residential property at \$11,900 for 2009 and \$12,200 for 2011, 2013 and 2015.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On September 17, 2018, Ellen Yuhan, our designated administrative law judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Robert W. Metz and Terrance Durousseau, his Hearing Officers. They were all sworn as witnesses.

RECORD

4. The official record for this matter includes the following: (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.²

¹ This petition is a duplicate of 45-004-13-1-5-01160-16.

² Neither party offered any exhibits.

NOWACKI'S STANDING TO APPEAL 2009 ASSESSMENT

5. The Assessor challenged Nowacki's standing to appeal the property's 2009 assessment because he did not own the property on the March 1, 2009 assessment date. Pursuant to our procedural rules, either the owner of the subject property *or the taxpayer responsible for paying the property taxes on the subject property* can be a proper party to an appeal. IAC 52-2-2-13.
6. In Indiana, property taxes are due and payable in two (2) equal installments on May 10 and November 10 *of the year following an assessment*. Ind. Code § 6-1.1-22-9(a). Nowacki confirmed that he purchased the property on October 21, 2009. He was therefore responsible for paying the property taxes for the March 1, 2009 assessment that became due and payable on May 10, 2010 and November 10, 2010. Thus, we conclude he has standing to appeal the property's 2009 assessment.

BURDEN OF PROOF

7. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
8. Here, we have no information from which to determine whether the property's assessment increased by more than 5% between 2008 and 2009. Because Nowacki neither argued nor offered any evidence to show that it did, he bears the burden for 2009. The property's assessment decreased from 2010 to 2011 and then remained the same from 2011 through 2015. Nowacki therefore bears the burden of proof for 2011, 2013 and 2015 as well.

SUMMARY OF CONTENTIONS

9. Nowacki's case:
 - a. Over the years, there has been no change to the property's assessed value of \$12,200 even though it and other properties on the same block of Juniper Avenue have repeatedly churned through the commissioners' sales. *Nowacki testimony*.
 - b. The previous owner purchased the property for \$25 but walked away from it because of the outrageous assessment. The over-assessment in Gary creates a pattern of unstable ownership and destroys market value while preserving the assessed value. *Nowacki testimony*.

- c. The Assessor combined two parcels, resulting in a considerable assessment reduction for the property. But Nowacki is requesting a value of \$3,500, which he contends is the property's market value. *Nowacki testimony*.

10. The Assessor's case:

- a. The Assessor contends that Nowacki did not own the property on the March 1, 2009 assessment date. The Assessor also argues that Nowacki provided no evidence to support a change to any of the assessments under appeal, and he recommends no change to the assessments. *Durousseau testimony*.

ANALYSIS

11. Nowacki failed to make a prima facie case for reducing the property's assessment for any of the years at issue. The Board reached this decision for the following reasons:

- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
- b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for the 2009, 2011, 2013 and 2015 assessments at issue in these appeals was March 1 of each respective assessment year. Ind. Code § 6-1.1-2-1.5(a).
- c. Nowacki contends the property's assessment should be \$3,500 for all of the years at issue, but he failed to present any probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).

- d. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2009, 2011, 2013 and 2015 assessments.

ISSUED: December 12, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.